

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**Deutsche Bank National Trust Company,  
as Trustee of Argent Mortgage Securities,  
Inc. Asset Backed Pass Through  
Certificates, Series 2005-W3 under the  
Pooling and Servicing Agreement Dated as  
of October 1, 2005, Without Recourse**

**Plaintiff,**

**vs.**

**Bernard Gardier, II, et al.**

**Defendants.**

**Case No. 1:07-cv-703**

**Judge Solomon Oliver, Jr.**

**JUDGMENT ENTRY AND  
DECREE OF FORECLOSURE**

UNITED STATES DISTRICT JUDGE SOLOMON OLIVER, JR.

This matter is before the Court on Plaintiff's Motion for Summary Judgment (ECF #16). No response by Defendants have been filed, though this court allowed defendants to obtain possible relevant discovery and extended their time to answer until July 21, 2007. The real property that is the subject of this foreclosure action (the "Property") is as follows:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, And known as being Sublot No. 72 in J.H. Sargent's Subdivision of Part of Original Brooklyn Township Lot No. 34, as shown by the Recorded Plat in Volume 4 of Maps, Page 36 of Cuyahoga County Records, and being 35 feet front on the Westerly Side of West 61st Street, (formerly Alume Street), and extending back of equal width 125 feet, as appears by said plat, be the same more or less. but subject to all legal highways.

In response to the Motion for Summary Judgment, the Court has reviewed the Complaint, the Answer and Counterclaims filed by Bernard J. Gardier, the Answer filed by Rhiannon C. Gardier, and all evidence submitted, including the Plaintiff's Foreclosure Compliance Affidavit. The Court finds that there are no genuine issues of material fact and that Plaintiff is entitled to

judgment in its favor as a matter of law. The Court further finds that reasonable minds can come to but one conclusion, which is adverse to the foregoing defendants, and therefore grants Plaintiff's Motion for Summary Judgment on its Complaint and on Bernard J. Gardier's Counterclaims.

The Court finds that Bernard J. Gardier executed the promissory note referenced in the Complaint (the "Note") and therefore promised, among other things, to make monthly payments on or before the date such payments were due. The Court further finds that Plaintiff is the owner and holder of the Note and that the sums due under the Note were accelerated in accordance with the terms of the Note and Mortgage. The Court further finds that Bernard J. Gardier and Rhiannon C. Gardier executed and delivered the mortgage referenced in the Complaint (the "Mortgage"), that Plaintiff is the owner and holder of the Mortgage, and that the Mortgage secures the amounts due under the Note.

The Court acknowledges that Rhiannon C. Gardier filed an Answer and Notice of Disclaimer of Dower Interest in which she requested to be dismissed from this action. The Court finds that Rhiannon C. Gardier cannot be dismissed and must remain a party to this action so that her dower interest will be properly released at the foreclosure sale of the property and clear title can be transferred to the buyer.

The Court finds that the Note and Mortgage are in default because monthly payments have not been made. The Court further finds that the conditions of the Mortgage have broken, the break is absolute, and Plaintiff is entitled to have the equity of redemption and dower of the current title holders foreclosed.

The Court further finds that there is due on the Note principal in the amount of \$75,778.42 plus interest on the principal amount at the rate of 8.2% per annum from September 2, 2006. The Court further finds that there is due on the Note all late charges imposed under the Note, all advances made for the payment of real estate taxes and assessments and insurance premiums, and all costs and expenses incurred for the enforcement of the Note and Mortgage, except to the extent the payment of one or more specific such items is prohibited by Ohio law.

As a result, the Court hereby enters judgment for the amount due on the Note against Bernard J. Gardier.

The Court finds that the Mortgage was recorded with the County Recorder and is a valid and subsisting first mortgage on the Property. The Court further finds that the parties to the Mortgage intended that it attach to the entire fee simple interest in the property. Plaintiff's Mortgage is, however, junior in priority under Ohio law to the lien held by the County Treasurer to secure the payment of real estate taxes and assessments. All amounts payable under Section 323.47 of the Ohio Revised Code shall be paid from the proceeds of the sale before any distribution is made to other lien holders.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that unless the sums found to be due to Plaintiff are fully paid within ten (10) days from the date of the entry of this decree, the equity of redemption of the defendant title holders in the Property shall be foreclosed and the Property shall be sold free of the interests of all parties to this action. In addition, an

order of sale shall issue to the Master Commissioner, directing him to appraise, advertise and sell the Property according to the law and the orders of this Court and to report his proceedings to this Court.

Notice of the time and place of the sale of the Property shall be given to all persons who have an interest in the Property according to the provisions of Section 2329.26 of the Ohio Revised Code.

Upon distribution of the proceeds, pursuant to the Order of Confirmation of Sale and Distribution, a certified copy of the Order shall be issued to the Cuyahoga County Recorder and Clerk of Courts directing them to enter the same on the margin of the records of the mortgages and liens, releasing the liens adjudicated herein from the premises.

**IT IS SO ORDERED.**

**DATE:** 7/30/2007

/s/SOLOMON OLIVER, JR.

Judge Solomon Oliver, Jr.  
UNITED STATES DISTRICT JUDGE

Approved:

/s/ Kevin L. Williams  
Kevin L. Williams (0061656)  
Manley Deas Kochalski LLC  
P. O. Box 165028  
Columbus, OH 43216-5028  
Telephone: 614-222-4921  
Fax: 614-220-5613  
Email: klw-f@mdk-llc.com  
Attorney for Plaintiff

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**JUDGMENT**

UNITED STATES DISTRICT JUDGE SOLOMON OLIVER, JR.

The Court having contemporaneously entered its Summary Judgment Order and Decree of Foreclosure, this action is accordingly terminated pursuant to Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

DATE: 7/30/2007

/s/SOLOMON OLIVER, JR.

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Judge Solomon Oliver, Jr.  
UNITED STATES DISTRICT JUDGE